

UNITED STATES DISTRICT COURT
THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	MDL NO. 1456 Civil Action No. 01-CV-12257-PBS Judge Patti B. Saris
THIS DOCUMENT RELATES TO: <i>State of Montana v. Abbott Labs Inc., et al.</i> , 02-CV-12084-PBS	

**DEFENDANTS PFIZER AND PHARMACIA'S RESPONSE TO THE
STATE OF MONTANA'S ADDITIONAL FACTS RELIED UPON IN
RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Rule 56.1, defendants Pfizer Inc. ("Pfizer"), and Pharmacia Corporation and Pharmacia & Upjohn (together, "Pharmacia") submit this response to the State of Montana's Additional Facts Relied Upon by Montana in Response to Defendants Motion for Summary Judgment (State's Additional Facts") (Docket No. 3903). The principal allegations of the State and material cited in support thereof are found at the State's Additional Facts ¶¶ 137 to 144. The allegations in these paragraphs of the State's Additional Facts correspond to facts already alleged and materials already submitted by the State of Montana in its L.R. 56.1 Statement of Undisputed Material Facts in Support of Motion for Partial Summary Judgment Against Certain Defendants ("Montana 56.1 Stmt.") (Docket No. 3737).

Pfizer and Pharmacia hereby incorporate by reference Defendants' Joint 56.1 Reply to Additional Facts Relied Upon by Montana in Response to Defendants' Motion for Summary Judgment. In addition, Pfizer and Pharmacia make the following Response:

Paragraph 144: This paragraph incorporates certain paragraphs of the declaration of Jeff Buska that reference alleged "spreads" of "Pfizer" drugs. (See Buska Decl. ¶ 44 & Exh. H.) *First*, of the 54 NDC codes listed in Exhibit H, only 2—those for Zithromax—are Pfizer's. The remaining 52 NDC codes are for Pharmacia drugs. *Second*, as to the two Pfizer NDC codes, the purported "spreads" range from 27.0% to 36.9%. (See Buska Exh. H.) Even if one were to assume these "spreads" are accurate, after accounting for the 25% markup by the third-party publishers, these "spreads" appear to reflect discounts of less than 2% to 12% off of Pfizer's list price. *Third*, 30 of the 54 NDC codes involve labeler codes that were (or should have been) reimbursed by Montana at Direct Price under Montana Medicaid's own regulations and policies. (See Local Rule 56.1 Statement of Undisputed Facts in Support of Pfizer's and Pharmacia's Motion for Summary Judgment (Docket No. 3770), and related declarations and exhibits). Accordingly, any alleged "spread" from an AWP is irrelevant, as those drugs were not reimbursed by the State of Montana on the basis of an AWP.

Respectfully submitted,

Dated: April 5, 2007

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of April, 2007, a true and accurate copy of Defendants Pfizer Inc and Pharmacia Corp's Response to the State of Montana's Additional Facts Relied Upon in Response to Defendants' Motion for Partial Summary Judgment was served upon all counsel of record via the Lexis-Nexis Filing System:

DATED: April 5, 2007.

/s/ Mark D. Smith